

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

STEVEN B. SIVAK, et al.

Plaintiffs,

vs.

No. 13-cv-15263
Hon. Gerald E. Rosen

**UNITED PARCEL SERVICE
COMPANY**

Defendant.

**OPINION AND ORDER DENYING PLAINTIFFS' MOTION FOR CLASS
CERTIFICATION WITHOUT PREJUDICE**

Plaintiffs initiated this purported class action litigation on December 27, 2013, generally alleging that Defendant United Parcel Service overcharges customers who pay for loss/damage insurance. (Dkt. # 1). On January 10, 2014, this Court set a scheduling conference for February 11, 2014 at 10:30am. (Dkt. # 7). Plaintiffs have now moved for class certification under Federal Rules of Civil Procedure 23(b)(2) and (b)(3). (Plfs' Mtn., Dkt. # 8, at 1). Perhaps due to this matter's procedural posture, Plaintiffs did not support their Motion with any evidence. Indeed, Plaintiffs seemingly admit that their Motion is premature: They filed this Motion to avoid any attempt by Defendant to pick-off putative class members through an offer of judgment. (*Id.* at 3) (citing *Hrivnak v. NCO Portfolio Mgmt.*, 719 F.3d 564 (6th Cir. 2013)). Recognizing its prematurity, Plaintiffs

“reserve the right to amend or modify the classes and subclasses they seek to have certified after any appropriate discovery has occurred” and request that this Court “set a briefing schedule that takes into an (sic) account any discovery needs preparatory to determination of the class certification issues in this case.” (*Id.*).

The Court DENIES Plaintiffs’ Motion without prejudice. It is premature and, without basic supporting evidence, prevents this Court from conducting a “rigorous analysis” as to whether Plaintiffs have satisfied Federal Rule of Civil Procedure 23(a)’s prerequisites. *Wal-Mart Stores v. Dukes*, 131 S.Ct. 2541, 2551 (2011). It is the Court’s experience that discovery and potential further motion practice provides a necessary preamble to class certification issues. The Court directs the parties to be prepared to discuss class certification issues at the upcoming scheduling conference on February 11.

For all of the foregoing reasons,

IT IS ORDERED that Plaintiffs’ Motion for Class Certification (Dkt. # 8) is DENIED WITHOUT PREJUDICE, pending discovery and future motion practice.

IT IS SO ORDERED.

Dated: January 21, 2014

s/Gerald E. Rosen
GERALD E. ROSEN
CHIEF, U.S. DISTRICT COURT

I hereby certify that a copy of the foregoing document was mailed to the attorneys of record on this date, January 21, 2014, by electronic and/or ordinary mail.

s/Julie Owens

Case Manager, 313-234-5135